

Remarks/Arguments

Claims 1-3, 24 and 30-39 are pending in the application. Claim 1 is amended and Claim 2 and 30 are cancelled. Applicant reserves the right to prosecute canceled subject matter in a continuation application. Claims 40-48 are new. Following entry of this amendment, Claims 1, 3, 24, and 31-48 will be pending.

Rejections Under 35 U.S.C. § 112, first paragraph

Claims 1-3, 24, and 30-39 have been rejected under 35 U.S.C. § 112 as indefinite for the use of the phrase “biological molecule inhibitor.” Claim 2 was rejected for use of the phrase “the hypervariable region thereof” for lack of antecedent basis.

As amended, Claim 1 incorporates the limitations of Claim 2, and specifies that the biological molecule inhibitor is a monoclonal antibody. In addition, at the Examiner’s suggestion, Claim 1 now recites a fragment that comprises “a” hypervariable region (or CDR) thereof. It is believed that the indefiniteness rejections are made moot by the amendments.

Claims 1 and 30 are rejected under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement. The Examiner has asserted that a “non-radiolabeled biological molecule inhibitor . . . of EGFR/Her1” encompasses a broad genus that is not adequately described by the specification. As the claims now recited that the biological inhibitor molecule is an antibody, it is believed that the rejection is made moot.

Rejections Under 35 U.S.C. § 102(e)

Claims 1 and 30 are rejected under 35 U.S.C. § 102(e) as being anticipated by Greene (U.S. Patent 6,417,168). The Examiner asserts that Greene teaches a method of treating a tumor by administering, in combination with radiation, a peptide that inhibits an activity of EGFR (formation of p185/EGFR heterodimers). The rejection is respectfully traversed.

Greene issued from a regular U.S. utility application (U.S. Ser. No. 09/111,681) filed July 8, 1998. Greene claims the benefit of provisional application Ser. No. 60/076,788, filed March 4, 1988, a copy of which is provided herewith. The Greene provisional application

dose not disclose or suggest any tumor treatment that involves the use of radiation. Greene did not disclose a method of treating a tumor by administering a peptide that inhibits formation of erbB protein heterodimers with radiation until the application filed July 8, 1998. The priority date for the claimed invention is May 15, 1998. Accordingly, the Greene patent does not constitute prior art under 35 USC § 102(e).

Claims 1 and 30 are rejected under 35 U.S.C. § 102(e) as being anticipated by Arnold (U.S. Patent 5,736,534). The Examiner asserts that Arnold teaches methods of treating cancers by administering quinazolines in combination with radiation. Since the claims are limited to antibodies, the rejection is overcome. Applicant respectfully requests that the rejections under 35 U.S.C. § 102(e) be withdrawn.

Rejections Under 35 U.S.C. § 103

Claims 1-3, 24, and 31-39 are rejected under 35 U.S.C. § 103(a) as obvious over Saleh in view of Goldstein. Claim 30 was free of the art and was not rejected. Accordingly, Claim 1 has been amended to include the limitations of Claim 30. The rejection is believed moot in view of the claim amendments.

Double patenting

The Applicant acknowledges the provisional rejection of Claims 1-3, 24 and 30 on the ground of nonstatutory obviousness-type double patenting over claims 1-10 of copending Application No. 11/208,825. It appears that the Assignment of the instant application has not been properly recorded, as the two applications are not commonly assigned. The Applicant is taking steps to correct the record. The Applicant notes that Application No. 11/208,825 does not constitute prior art as it has a priority date that is later than the priority date of the instant application.

Conclusion

It is respectfully submitted that all claims in the present application are in condition for allowance, which action is respectfully requested. The Examiner is invited to contact

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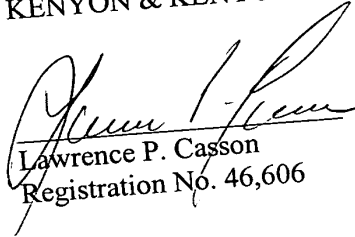
Applicant's representative to discuss any issue that would expedite allowance of the subject application.

Respectfully submitted,

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